

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CONNIE DEHART)	
Claimant)	
VS.)	
)	Docket No. 214,101
RECREATION VEHICLE PRODUCTS)	
Respondent)	
AND)	
)	
FIREMAN'S FUND)	
Insurance Carrier)	

ORDER

Claimant appeals from the March 9, 1998, Award of Administrative Law Judge John D. Clark. Oral Argument was held in Wichita, Kansas, on October 9, 1998.

APPEARANCES

Claimant appeared by her attorney, Dale V. Slape of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kendall R. Cunningham appearing for Scott J. Mann of Hutchinson, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Did claimant refuse to return to work when offered a job by respondent which paid a comparable wage and was within claimant's restrictions?
- (2) What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Appeals Board, in particular, finds pertinent the reliance by the Administrative Law Judge upon Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), and Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), in denying claimant a work disability and limiting claimant to her functional impairment. The evidence supports respondent's contention that a comparable wage job was offered to claimant after the injury. However, for reasons unknown, claimant simply stopped showing up for work and lost her job as a result of violations of respondent's attendance policy. In addition, the evidence does not support a finding that claimant put forth a good faith effort in attempting to obtain employment after being terminated by respondent. Therefore, the Appeals Board finds claimant was properly limited to her functional impairment.

The Administrative Law Judge adopted the opinion of Dr. Jacob Amrani in granting claimant a 6 percent functional impairment to the body as a whole, finding the opinion of Dr. Amrani to be more credible than that of Dr. Lawrence R. Blaty, claimant's expert. Dr. Amrani, as a treating physician for claimant, had the opportunity to examine and to treat claimant over a several-month period. His findings included utilization of x-rays, which were essentially normal, and two functional capacity evaluations. Both functional capacity evaluations indicated a less than maximum effort and possible symptom magnification.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated March 9, 1998, should be, and is hereby, affirmed, and claimant, Connie DeHart, is granted an award against the respondent, Recreation Vehicle Products, and its insurance carrier, Fireman's Fund, for an injury occurring June 20, 1996, through August 1996, based upon an average weekly wage of \$351.01, for a 6 percent permanent partial impairment to the body as a whole.

Claimant is entitled to 5 weeks temporary total disability compensation at the rate of \$234.02 per week totaling \$1,170.10, followed by 24.9 weeks permanent partial disability compensation at the rate of \$234.02 per week totaling \$5,827.09, making a total award of \$6,997.19, all of which is due and owing in one lump sum, minus amounts previously paid as of this Award.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting	
Transcript of preliminary hearing	\$106.20
Deposition of Jerry D. Hardin	\$218.80
Deposition of Lawrence R. Blaty, M.D.	\$198.50
 Patty L. Morton, Certified Shorthand Reporter	
Deposition of Connie L. DeHart	Unknown
Deposition of Debbie Reppond	Unknown
Deposition of Jack Weaver	Unknown
Deposition of Jacob Amrani, M.D.	Unknown
Deposition of Mike Yutzy	Unknown
 Barber & Associates	
Transcript of regular hearing	\$185.50

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director